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09/883,893	06/18/2001	Christopher B. Hewett	0317	2534

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BURNS DOANE SWECKER & MATHIS L L P
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[REDACTED] EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
3653	

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/883,893	Applicant(s) Hewitt
Examiner Michael E. Butler	Art Unit 3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on May 16, 2003

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 21-27, 29, 31, 36-48, and 50-54 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 21-27, 29, 31, 36-48, and 50-53 is/are rejected.

7) Claim(s) 54 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Election/Restriction

2. Applicant's election of invention II without traverse of the restriction requirement in Paper No. 5 is acknowledged and made final.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 52 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A disposal aperture membrane is not described within the specification.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 37-39 are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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There is no antecedent basis for "the tissue dispenser station" or "the tissue disposal station." or "the body" in the claims.

7. The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

...a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitation of claim to which it refers.

8. Claims 37-39 are rejected under 35 U. S. C. 112 fourth paragraph, as being an improper dependent claims. A dependent claim must depend from an otherwise set forth claim. Upon cancellation of claim 34, claims 37-39 are incomplete with applicant's cancellation of claim 34. Applicant should either restructure the claims as independent claims or predicate dependency by reference from an otherwise currently set forth claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

10. Claims 21-24, 29, and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Shapland et al. which discloses:

(re: cl 21) bottom portion tissue dispensing station an orifice (fig2)
top portion having tissue disposal station having an orifice (top fig 3)
disposal and dispensing stations separated by a wall (fig 4)
fastener for fastening dispensing above floor level (inherent in view of bottom fig 3)
(re: cl 22) disposing orifice is in top portion of dispenser (top fig 3)

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(re: cl 23/24/37/38) tissue disposal station overlies the tissue dispenser station (fig 2/3)

(re: cl 29) dispensing station and disposal station enclosed except at orifice (fig 2).

11. Claims 21-24, 26, 29, and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Reif which discloses:

(re: cl 21) bottom portion tissue dispensing station an orifice (20)

top portion having tissue disposal station having an orifice (13/24)

disposal and dispensing stations separated by a wall (3)

fastener for fastening dispensing above floor level (2/15)

(re: cl 22) disposing orifice is in top portion of dispenser (24)

(re: cl 23/24/37) tissue disposal station overlies the tissue dispenser station (fig 2 & 3)

(re: cl 36) tissue dispensing station an orifice spaced from rear wall

having tissue disposal station having an orifice spaced from rear wall 24

disposal and dispensing stations separated by a wall (3)

(re: cl 33) disposal and dispenser are vertically sited relative each other (13/15 fig 2).

12. Claim 52 is rejected under 35 U.S.C. 102(b) as being anticipated by

Harsanti, Jr. et al. which discloses:

(re: base claim 21) bottom portion tissue dispensing station an orifice (24)

top portion having tissue disposal station having an orifice (24)

disposal and dispensing stations separated by a wall (c3 L 62-c 4 L 7)

fastener for fastening dispensing above floor level (32/18)

(Re: cl 52) tissue disposal overlies dispenser

disposal orifice in top portion of dispenser

fastener on back (32/18)

dispenser enclosed but for orifice (Fig. 1-5)

disposing orifice covered with membrane (24).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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14. Claims 21-26, 29, 37-39 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Yates in view of Cole in which the former discloses:

(re: cl 21) bottom portion tissue dispensing station an orifice (c3 L 50-57)
top portion having tissue disposal station having an orifice (29 fig 2)
disposal and dispensing stations separated by a wall (19)
(re: cl 22) disposing orifice is in top portion of dispenser (29 fig 2)
(re: cl 23/24) tissue disposal station overlies the tissue dispenser station (Fig 3)
(re: cl 28) body includes a flat support shelf for supporting soap (23)
(re: cl 29) dispensing station and disposal station enclosed except at orifice (fig 2)
(re: cl 30) body includes an openable door (31)
(re: cl 32, 36) tissue dispensing station an orifice spaced from rear wall (17 fig 1)
having tissue disposal station having an orifice spaced from rear wall (31 fig 2
and 31 fig 3)
(re: cl 33) disposal and dispenser are vertically sited relative each other (fig 3)
(re: cl 34,37,38) (33) disposal overlies dispenser station (29 fig 2)
(re: cl 35) (34) top and bottom portion, tissue disposing orifice in bottom and
facing downward (c3 L 50-57)
(re: cl 39) body forms a top portion (23).

the latter discloses the elements not inherently disclosed by the former of:

elongated fastener for suspending dispenser above floor level (18), fastener element for
fastening dispensing above floor level from back (18,17).

It would have been obvious at the time of the invention for Yates to use an
fastener attached to the back of the dispenser for suspending the dispenser because an
adhesive fastener attachment provides flexible detachable mounting options in
convenient locations as taught by Cole and come up with the instant invention as
claimed.

15. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over
Reif in view of Giovine. in which the former discloses the elements previously discussed:

Giovine discloses the elements not inherently disclosed by the former of:

(Re: cl 52) disposing orifice covered with membrane (24/34).

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16. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reif in view of Meyer, Jr. in which the former discloses the elements previously discussed:

Meyer, Jr. discloses the elements not inherently disclosed by the former of:
disposing orifice covered with membrane (c3 L 14-17).

It would have been obvious at the time of the invention for Reif to cover the tissue orifices because a membrane protects clean tissues against contaminants, separate dispensing tissues, and retain disposed of tissues as taught by Glovine and come up with the instant invention as claimed.

17. Claims 21-24, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of Glovine, in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

(re: cl 27) orifice covered by a membrane (24/34).

It would have been obvious at the time of the invention for Shapland et al. to cover the tissue orifices because a membrane protects clean tissues against contaminants, separate dispensing tissues, and retain disposed of tissues as taught by Glovine and come up with the instant invention as claimed.

18. Claims 21-24, 27, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of Meyer, Jr. in which the former discloses the elements previously discussed and further discloses:

the latter discloses the elements not inherently disclosed by the former of:

(re: cl 27) orifice covered by a membrane (surrounding protruding tissues - fig 4);
(re: cl 31) tissue cartridge (col. 3 L 1-6).

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It would have been obvious at the time of the invention for Shapland et al. to cover the tissue orifices because a membrane protects clean tissues against contaminants, separate dispensing tissues, and retain disposed of tissues as taught by Meyer, Jr. and come up with the instant invention as claimed. It would have been obvious at the time of the invention for Shapland et al. to replenish tissues with a refill cartridge because a cartridge permits rapid refill and avoids tissue contamination during refill as taught by Meyer, Jr. and come up with the instant invention as claimed.

19. Claims 21-24, 27, 29, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of McPherson, in which the former discloses the elements previously discussed and further discloses:

the latter discloses the elements not inherently disclosed by the former of:
(re: cl 48) separating wall is part of body (30 fig 2).

It would have been obvious at the time of the invention for Shapland et al. to make a separating wall which is part of the body because a body formed wall is durable and eases attachment of the receptacle to common dispenser stations as taught by McPherson and come up with the instant invention as claimed.

20. Claims 21-24, 29, and 37-45 and 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Wilson '085 in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

(re: cl 21,32,36) fastener for fastening dispensing above floor level (col. 8 L 62-63)
(re: cl 28) a flat shelf (col. 8 L 64-65).
(re: cl 40, 53) mounting the tissue dispenser in a shower stall vertical wall (c2 L 36-45; fig 11).

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(Re: cl 54) mounting the dispenser with the tissue disposal station overlying the tissue dispenser station.

It would have been obvious at the time of the invention for Yates to attach the tissue dispenser to a shower stall with a fastener because such location facilitates tissue aided shower grooming and shower cleaning as taught by Wilson '085 and come up with the instant invention as claimed. It would have been obvious at the time of the invention for Yates to included a soap shelf shower because a having sop proximate the cleaning tissue aids in grooming as taught by Wilson '085 and come up with the instant invention as claimed.

21. Claims 32,33, 40, 44, 46-48, and 50-51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Wilson '085 in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

(re: cl 32,36) fastener for fastening dispensing above floor level (col. 8 L 62-63)
(re: cl 40, 53) mounting the tissue dispenser in a shower stall vertical wall (c2 L 36-45; fig 11);

It would have been obvious at the time of the invention for Cole to attach the tissue dispenser to a shower stall with a fastener because such location facilitates tissue aided shower grooming and shower cleaning as taught by Wilson '085 and come up with the instant invention as claimed.

22. Claims 40 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harsanyi, Jr. et al. al. in view of Wilson '085 in which the former discloses:

(re: cl 40) A tissue dispenser comprised of a dispenser station with orifice (20/24 left fig 1)

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a disposal station with orifice (20/24 right fig 1)

(re: cl 51) a wall which is part of a formed dispenser body separating the sections (fig 2).

The latter discloses the elements not inherently disclosed by the former of:

(re: cl 32,36) fastener for fastening dispensing above floor level (col. 8 L 62-63)
(re: cl 40, 53) mounting the tissue dispenser in a shower stall vertical wall (c2 L

36-45; fig 11);

(Re: cl 54) mounting the dispenser with the tissue disposal station overlying the tissue dispenser station

It would have been obvious at the time of the invention for Cole to attach the tissue dispenser to a shower stall with a fastener because such location facilitates tissue aided shower grooming and shower cleaning as taught by Wilson '085 and come up with the instant invention as claimed.

23. Claims 21-26, 27-29, 37-38, 48, and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapland et al. in view of Cole, in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

an adhesive strip for suspending the dispenser (18/17).

It would have been obvious at the time of the invention for Shapland et al. to use an adhesive strip attached to the back of the dispenser for suspending the dispenser because an adhesive attachment provides flexible detachable mounting options in convenient locations as taught by Cole and come up with the instant invention as claimed.

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24. Claims 36 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harsanti, Jr. et al. in view of Sauer et al. in which the former discloses the elements previously discussed and the latter discloses the elements not inherently disclosed by the former of:

(Re: cl 36) a cord for suspending the tissue dispenser system (c3 L 3-16).

It would have been obvious at the time of the invention for Shapland et al. to use an adhesive strip attached to the back of the dispenser for suspending the dispenser because an adhesive attachment provides flexible detachable mounting options in convenient locations as taught by Cole and come up with the instant invention as claimed.

Response to arguments/amendments

25. The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections. The orientation of the aperture relative the ground is not an attribute of the dispenser as the dispenser can be rotated about a horizontal axis and the aperture is on the bottom of the dispenser and still constitute the same device.

Inter-changability of facial and bathroom tissue is a well known to those in the art and longstanding as either is capable of performing the other's preferred task.

Wilson explicitly discloses mounting the dispenser in a shower stall (c2vL 37), the cover being present to protect the tissue from the shower water. Wilson discloses a method for orienting the tissue dispensing apparatus downward.

Applicant's arguments regarding claim 36 are deemed moot in view of the new grounds for the rejections.

Broadening of fastener type ineffective in defining over the prior art.

Allowable Subject Matter

26. Claim 54 is objected to as being a dependent claim premised upon a rejected base claim but would be allowed if the re-written in independent form or if the limitations of an allowable claim were incorporated within the independent base claim from which this claims depend or if re-written premised upon dependence from an otherwise allowable base claim.

Conclusion

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (703) 306-4173. The fax number for the Group is (703) 305-7687.

Michael E. Butler
Michael E. Butler
Examiner

Donald P. Walsh
DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600